

Application No.: 10/679,059
Amendment Dated December 10, 2004
Preliminary Amendment

Attorney Docket No.: MOF-13-CON

REMARKS

Please note that from Examiners first action, it appears that a preliminary amendment filed with the application was not entered. Applicant at this time has based this response on such status of the case that the preliminary amendment was not entered. Applicant respectfully requests the status of the claims to confirmed as that of the claims attached to the application specification as filed, without the preliminary amendment.

Therefore, Claims 1-6 are currently pending.

The Examiner rejects claims 1-6 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of US Patent 6,685,196. Applicant at this time Cancels claims 2-4 as being redundant over the '196 patent. As to Claim 1 in the present application, it does not claim an invention more narrow than that of the '196 patent, but claims a different and broader invention, having fewer elements. Such invention, as in the current claim 1, is not claimed the '196 patent. Further, the present application is a continuation of such '196 case, the cross noting information not applied to the case as the preliminary amendment was not first entered. Applicant respectfully requests the proper cross noting of the application as described herein, be added to the present case. Therefore, as the present case has the same priority date and therefore the same patent term ending date, the issue of obviousness type double patenting is respectfully rendered moot. Applicant respectfully requests the Examiner to withdraw this rejection.

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The Examiner rejects the claims as anticipated under 35 U.S.C. Section 102, by US. Patent 4,767,655. Applicant respectfully submits that each element of Claim 1 is not found in the reference.

Applicant submits that the epoxy utilized in the '655 reference is utilized as an adhesive, please refer to Col 4, Line45. The epoxy resin layer 10 so described is part of a wall joint, not a sealant. A review of the epoxy resin layer 10 from the patent, does not teach the present claimed invention of hydrophilic materials with joint sealing compressible impregnated open cell foam. The '655 reference only teaches a joint seal that can be attached to a joint wall by an epoxy resin applied to the joint wall. Since the '655 reference does not recite each and every element of Claim1, therefore the rejection under Section 102 should be withdrawn. Applicant respectfully requests withdrawal of the rejection, and forwarding of a Notice of Allowance to the undersigned.

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If the Examiner has any questions or comments that would speed prosecution of this case, the Examiner is invited to call the undersigned at 260/484-4526.

Respectfully submitted,



Randall J. Knuth
Registration No. 34,644

RJK/

CERTIFICATE OF MAILING

Encs: Amendment to the Specification
(1 Sheets; pp. 5)
Amendments to the Claims
(1 Sheets; pp. 6)
Explanatory Cover Sheet Page 1
Petition for Extension of Time
One Month
Check 8271 (\$60).
Return Postcard

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450, on: December 10, 2004.

Randall J. Knuth, Registration No. 34,644
Name of Registered Representative



December 10, 2004
Date

Customer No. 022855
RANDALL J. KNUTH, P.C.
~~3510-A Stellhorn Road 4921 - 5000 15~~
Fort Wayne, IN 46815-4631
Telephone: 260/485-6001 ~~484-4526~~
Facsimile: 260/486-2794